IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2602 OF 2005
ALONG WITH
CRIMINAL WRIT PETITION NO.2603 OF 2005

Shri Prabhakar Yeshwant Narwade ..Petitioner.
Versus
Shri Hiraman Gopal Lokhande
and Anr. ..Respondents.

....
Mr.J.M.Puranik, Adv. for Petitioner.
Mr.A.S.Khandeparkar, Adv. for Respondent No.1.
Mr.Rajesh More, APP, for State.
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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 22nd February, 2007.

P.C.:

1. Heard Mr.Puranik, the learned Advocate for the petitioner-orig.accused, Mr.Khandeparkar, the learned Advocate for respondent No.1-orig.complainant and Mr.More, the learend APP for the State.

2. The petitioner is facing prosecution in two cases under the N.I.Act. In the said cases process has been issued against the petitioner under Section 138 of N.I. Act. Cri.Writ Petition No.2602/2005 pertains to Criminal Case No.752/1995

and Cri.Writ Petition No.2603/2005 pertains to Criminal Case No.751/1995. Both the cases are pending before the learned Jt. CJJD & JMFC, Kalyan.

3. Being aggrieved by the order issuing process, revisions were preferred by the petitioner. However, the said Revisions came to be dismissed. Being aggrieved thereby, these Writ Petitions have been preferred.

4. In the present case, the agreement for sale between the petitioner and the respondent is dated 28.3.1994. The two cheques were also issued on 28.3.1994 however they were post-dated cheques of Rs.50,000/- each dated 28.11.1994 and 30.12.1994. Both these cheques were deposited in Bank and they were dishonoured on 31.3.1995.

5. It is the case of the petitioner that the learned Civil Judge (S.D.) Kalyan by his judgment and decree dated 22.1.2003 in Special Civil Suit No.211 of 1999 held that the said agreement for sale is not enforceable and, therefore, the debt or liability cannot be said to be enforceable in

law in these cases as both the cases are based on the very same agreement for sale. It is an admitted position that in Special Civil Suit No.211 of 1999 it has been held that the said agreement for sale is not enforceable. Besides this, as far as the property in respect of which the agreement for sale was entered into i.e. Survey No.117 Hissa No.2 situated at village Katemaniwali, it is seen that the respondent No.1 was not the sole owner of the said property, but, his sisters were also co-owners of the said property. Therefore, when only respondent No.1 entered into the agreement for sale with the petitioner on 28.3.1994, the said agreement would not itself be unenforceable as the co-owners were not parties to the said agreement. Moreover, respondent No.1-orig.complainant has also given indemnity bond to the petitioner that he will not deposit the two cheques of Rs.50000/- each. The said indemnity bond is at Exh.C to the Petitions. The said indemnity bonds have not been denied by respondent No.1.

6. The learned Sessions Judge has observed that the agreement for sale upon which the cheques

came to be issued was perfectly valid in the eye of law because it was only after the judgment and decree dated 22.1.2003 that it was declared that the agreement for sale is not enforceable. However,the learned Sessions Judge failed to appreciate the fact that the respondent No.1-orig.complainant was not the sole owner of the property in question, but, there were other co-owners of the said property and they were not parties to the said agreement. In such case, the said agreement could not have been enforced. From the facts, it is clear that agreement for sale was itself not enforceable and,therefore, any debt or liability arising therefrom cannot be said to be enforceable in law. In this view of the matter, process issued against the petitioner in Criminal Case No.752/1995 and Criminal Case No.751/1995 under section 138 of N.I.Act, is quashed.

7. Writ petitions are disposed of.

8. At this stage, Mr.Khandeparkar, the learned Advocate for respondent No.1 prayed that this order be stayed as he wishes to challenge this order before the Supreme Court. On his request,

this order shall remain stayed for five weeks from today.

(SMT.V.K.TAHILRAMANI,J.)